

NONREIMBURSABLE SPACE ACT AGREEMENT
BETWEEN
YAHOO! INC.
AND
NASA
FOR
WEB BASED VIDEO STREAMING FOR NASA TV, SPACE SHUTTLE PROGRAM (SSP),
AND INTERNATIONAL SPACE STATION (ISS) MISSION COVERAGE

ARTICLE 1. AUTHORITY AND PARTIES

In accordance with The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473 (c)), this Agreement is entered into by the National Aeronautics and Space Administration located at 300 E Street SW, Washington, DC 20546 (hereinafter referred to as "NASA") and Yahoo! Inc. located at 2914 Taylor Street, Dallas, TX 75226, (hereinafter referred to as "Yahoo!" or "PARTNER"). NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties."

ARTICLE 2. PURPOSE AND NASA'S COMMITMENT

Since the Return to Flight Missions Space Transportation System (STS)-114 and STS-121 the Space Operations Mission Directorate at NASA has had in place Space Act Agreements to cover the majority of the bandwidth required to provide the streaming video on the NASA portal. Primarily, this has been used to cover the streaming of the public channel of NASA TV during missions and during nonmission periods.

The demand for coverage on the web for streaming media was at a peak for the Return to Flight Missions but has remained high for all missions following those two. In consideration of this fact, NASA considered the need to extend this additional support through a similar but longer term space act agreement. For the next several years, the primary demand for NASA TV is going to come from Space Shuttle Mission coverage with science mission launches and major releases of results also contributing as well.

To meet the expected demand, NASA released an announcement to solicit in-kind proposals for web video streaming infrastructure and bandwidth services from non-NASA entities to support public access to information regarding NASA's activities and the results thereof. After a review and technical evaluation of the proposals received, NASA is partnering with Yahoo! to enhance the Agency's existing capabilities for Web Based Video Streaming. This enhanced coverage under this partnership will allow NASA to avoid imposing a cap on the number of visitors to the NASA Web Portal Video Streaming services.

ARTICLE 3. RESPONSIBILITIES

A. Yahoo! will use reasonable efforts to:

1. Provide live streaming coverage of NASA TV for the duration of the Agreement.
2. Provide dedicated bandwidth of 28Gbps with peaks up to 40Gbps two hours prior and post Shuttle launch events. Yahoo! will be responsible for monitoring and capping at these limits.

3. Provide a Streaming Center Manager with a team to handle NASA peak events (including shuttle launch events).
4. Provide Windows media encoded streams at various encoded levels of 700 kbps, 500 kbps, 300 kbps, 100 kbps, 56 kbps to support the various capabilities of public viewers.
5. Make personnel available to consult with NASA and NASA's contract web portal contractor, eTouch Systems on bandwidth utilization models and general coordination required to execute this Agreement. Provide regular traffic statistics during the STS flights to NASA team members to enable effective management of user experience.
6. Participate and supply representatives with operations level decision-making authority on NASA provided telecon activities during the missions.
7. Supply contact information to allow for 24x7 decision authority during missions.
8. At Yahoo!'s sole discretion, use reasonable efforts, subject to NASA and NASA's Web Portal Contractor, (eTouch Systems Inc.) guidance, to make any Yahoo! provided site content for use on the NASA.GOV Section 508 compliant.

B. NASA/will use reasonable efforts to:

1. Recognize Yahoo! for supporting NASA web video streaming requirements by placing Yahoo!-approved logos and text on the NASA streaming page within the NASA Portal.
2. Provide guidance on connecting to NASA TV to enable Yahoo! to encode NASA TV.
3. Use its best effort to link only to the Yahoo! provided link for streaming NASA TV in the Windows Media Format. NASA reserves the right to maintain backup capabilities for Windows Media streaming. In addition, NASA reserves the right to maintain alternative streaming capabilities as well as formats beyond those provided by Yahoo!.
4. Grant Yahoo! the nonexclusive right to distribute all NASA TV content on any Yahoo! property. With respect to any content, including, but not limited to, NASA TV content, images, text audio, video, NASA trademarks and logos (collectively, "NASA Content") provided by NASA to Yahoo! hereunder, NASA hereby grants to Yahoo! the nonexclusive, royalty-free right and license to encode, store, publicly distribute, transmit, perform and display the NASA Content on any Yahoo! properties via the Internet to include wireless and internet TV for the term of this Agreement.
5. Provide text, images, and content for Yahoo! to include on the Yahoo! Network related to NASA activities and the results thereof.
6. Provide factual statements to Yahoo! stating the contributions provided increased access to NASA content to the public.
7. Provide meeting space for any required face-to-face meetings in support of these responsibilities.

8. Provide telecon bridge for real time decisions to be made by the parties.

ARTICLE 4. SCHEDULE AND MILESTONES

The planned major milestones for the activities defined in the "Responsibilities" clause are as follows:

Telecons to support major events

As scheduled

ARTICLE 5. FINANCIAL OBLIGATIONS

There will be no transfer of funds or other financial obligations between the Parties under this Agreement and each Party will fund its own participation. All activities under or pursuant to this Agreement are subject to the availability of funds, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341.

ARTICLE 6. PRIORITY OF USE

Any schedule or milestone in this Agreement is estimated based upon the Parties' current understanding of the projected use of the NASA facilities and equipment by NASA personnel. In the event NASA's projected usage changes, Partner shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly. The Parties agree that NASA usage of any NASA facilities, equipment, and personnel shall have priority over the usage planned in this Agreement. Should a conflict arise, NASA in its sole discretion shall determine whether to exercise that priority. Likewise, should a conflict arise as between two commercial users, NASA, in its sole discretion, shall determine the priority as between the two users. This Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

ARTICLE 7. NONEXCLUSIVITY

This Agreement is not exclusive; accordingly, NASA may enter into similar Agreements for the same or similar purpose with other U.S. private or public entities.

ARTICLE 8. LIABILITY AND RISK OF LOSS

1. Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party's related entities (including, but not limited to, contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors and subcontractors, at any tier), and employees of the other Party's related entities for any injury to, or death of, the waiving Party's employees or the employees of its related entities, or for damage to, or loss of, the waiving Party's property or the property of its related entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

2. Each Party further agrees to extend this cross-waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against the other Party, related entities of the other Party, employees of the other Party, and employees of its related entities for injury, death,

damage, or loss arising from or related to activities conducted under this Agreement.

ARTICLE 9. INTELLECTUAL PROPERTY RIGHTS - DATA RIGHTS

1. General

(a) "Related Entity" as used in this Data Rights clause, means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner that is assigned, tasked, or contracted with to perform specified NASA or Partner activities under this Agreement.

(b) "Data," as used in this Data Rights clause, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(c) "Proprietary Data," as used in this Data Rights clause, means Data embodying trade secrets developed at private expense or comprising commercial or financial information that is privileged or confidential, provided that such Data: is not known or available from other sources without obligations concerning its confidentiality; has not been made available by the owners to others without obligation concerning its confidentiality; is not already available to the Government without obligation concerning its confidentiality; has not been developed independently by persons who have had no access to the information; and, is not required to be disclosed pursuant to federal statute, law, regulation, or valid court order.

(d) The Data rights set forth herein are applicable to employees of Partner and employees of any Related Entity of Partner. Partner shall ensure that its employees and employees of any Related Entity that perform Partner activities under this Agreement are aware of the obligations under this clause and that all such employees are bound to such obligations.

(e) Data exchanged between NASA and Partner under this Agreement will be exchanged without restriction as to its disclosure, use, or duplication except as otherwise provided in this clause.

(f) No preexisting Proprietary Data will be exchanged between the Parties under this Agreement unless specifically authorized in this clause or in writing by the owner of the Proprietary Data.

(g) In the event that Data exchanged between NASA and Partner include a restrictive notice that NASA or Partner deems to be ambiguous or unauthorized, NASA or Partner may notify the other Party of such condition. Notwithstanding such a notification, as long as the restrictive notice provides an indication that a restriction on use or disclosure was intended, the Party receiving such Data will treat the Data pursuant to the requirements of this clause unless otherwise directed in writing by the Party providing such Data.

2. Data First Produced by Partner Under this Agreement

In the event Data first produced by Partner in carrying out Partner responsibilities under this Agreement is furnished to NASA, and Partner considers such Data to be Proprietary Data, and such Data is identified with a suitable restrictive notice, NASA will use reasonable efforts to maintain the Data in confidence and such Data will be disclosed and used by or on behalf of the

U.S. Government (under suitable protective conditions) only for U.S. Government purposes.

3. Data First Produced by NASA Under this Agreement

Except for data disclosing an invention owned by NASA for which patent protection is being considered, in the event Partner requests that Data first produced by NASA (or any Related Entity of NASA) in carrying out NASA's responsibilities under this Agreement be maintained in confidence, and to the extent NASA determines that such Data would be Proprietary Data if it had been obtained from Partner, NASA will mark such Data with a restrictive notice and will maintain such marked Data in confidence for a period of 5 years after development of the Data, with the express understanding that during the aforesaid restricted period such marked Data may be disclosed and used (under suitable protective conditions) by or on behalf of the U.S. Government for U.S. Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Partner agrees not to disclose such marked Data to any third party without NASA's written approval until the aforesaid restricted period expires.

4. Publication of Results

Recognizing that section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. § 2473), as amended, requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, and that the dissemination of the results of NASA activities is one of the considerations for this Agreement, the Parties agree to coordinate proposed publication of results with each other in a manner that allows each Party a reasonable amount of time to review and comment on proposed publications.

5. Data Disclosing an Invention

In the event Data exchanged between NASA and Partner discloses an invention for which patent protection is being considered, the furnishing Party specifically identifies such Data, and the disclosure and use of such Data is not otherwise limited or restricted herein, the receiving Party agrees to withhold such Data from public disclosure for a reasonable time (presumed to be 1 year unless mutually agreed otherwise or unless such information is restricted for a longer period herein) in order for patent protection to be obtained.

6. Copyright

In the event Data is exchanged with a notice indicating that the Data is copyrighted and there is no indication that such Data is subject to restriction under paragraphs 2 or 3 of this clause (i.e., Data is not marked with a restrictive notice as required by paragraphs 2 or 3 of this clause), such Data will be presumed to be published and the following royalty-free licenses will apply.

(a) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this Agreement, the receiving Party and others acting on its behalf, may reproduce, distribute, and prepare derivative works only for carrying out the receiving Party's responsibilities under this Agreement.

(b) If the Data does not contain the indication of (a) above, the Data will be presumed to have been first produced under this Agreement and, except as otherwise provided in paragraph 5 of this clause and in the Inventions and Patent Rights clause of this Agreement for protection of reported inventions, the receiving Party and others acting on its behalf may reproduce, distribute, and prepare derivative works for any purpose.

7. Data Subject to Export Control

Technical data, whether or not specifically identified or marked, that is subject to the export laws and regulations of the United States and that is provided to Partner under this Agreement will be treated as such, and will not be further provided to any foreign persons or transmitted outside the United States without proper U.S. Government authorization, where required.

8. Background Data

(a) In the event Partner furnishes NASA with Data developed at private expense (or in the case of state or local government, Data developed at government expense) that existed prior to, or was produced outside of, this Agreement, and such Data embody Proprietary Data, and such Data is so identified with a suitable restrictive notice, NASA will use reasonable efforts to maintain the Data in confidence and such Data will be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) only for carrying out NASA responsibilities under this Agreement. Upon completion of activities under this Agreement, such Data will be disposed of as requested by Partner.

(b) At the time of execution of this Agreement, the Parties agree that the following Background Data embodies Proprietary Data that will be provided to NASA: None

9. Handling of Data

(a) In the performance of this Agreement, Partner and any Related Entity of Partner may have access to, be furnished with, or use the following categories of Data:

(i) Proprietary Data of third parties that the U.S. Government has agreed to handle under protective arrangements; and/or

(ii) U.S. Government Data, the use and dissemination of which, the U.S. Government intends to control.

(b) Data provided by NASA to Partner under the Agreement

(i) At the time of execution of this Agreement, the Parties agree that the following Proprietary Data of third parties will be provided to the Partner with the express understanding that Partner will use and protect such DATA in accordance with this clause:
Not Applicable

(ii) At the time of execution of this Agreement, the Parties agree that the following U.S. Government Data will be provided to Partner with the express understanding that Partner will use and protect such U.S. Government Data in accordance with this clause:
Not Applicable

(iii) At the time of execution of this Agreement, the Parties agree that the following software and related Data will be provided to Partner under a separate Software Usage Agreement with the express understanding that Partner will use and protect such related Data in accordance with this clause. Unless retention of such Data is otherwise authorized under the Software Usage Agreement or Partner has entered into a license, consistent with 37 C.F.R. Part 404, for software provided under this Agreement, upon completion of activities under this Agreement, such related Data will be disposed of as instructed by NASA: Not Applicable

(c) With respect to such Data specifically identified in this Agreement or specifically marked with a restrictive notice, Partner agrees to:

(i) Use, disclose, or reproduce such Data only to the extent necessary to perform the work required under this Agreement;

(ii) Safeguard such Data from unauthorized use and disclosure;

(iii) Allow access to such Data only to its employees and any Related Entity that require access for their performance under this Agreement;

(iv) Except as otherwise indicated in (c)(iii) above, preclude access and disclosure of such Data outside Partner's organization;

(v) Notify its employees who may require access to such Data about the obligations under this clause and ensure that such employees comply with such obligations, and notify its Related Entity that may require access to such Data about their obligations under this clause; and

(vi) Return or dispose of such Data, as NASA may direct, when the Data is no longer needed for performance under this Agreement.

10. Oral and visual information

If information that Partner considers to be Proprietary Data is disclosed orally or visually to NASA, NASA will have no duty to limit or restrict, and will not incur any liability for, any disclosure or use of such information unless: (a) Partner orally informs NASA before initial disclosure that such information is considered to be Proprietary Data, and (b) Partner reduces such information to tangible, recorded form that is identified and marked with a suitable restrictive notice as required by paragraphs 2 and 8 above and furnishes the resulting Data to NASA within 10 days after such oral or visual disclosure.

ARTICLE 10. INTELLECTUAL PROPERTY RIGHTS - PATENT AND INVENTION RIGHTS

1. The invention and patent rights set forth herein are applicable to any employees, contractors, subcontractors, or other entities having a legal relationship with Partner that are assigned, tasked, or contracted with to perform specified Partner activities under this Agreement. Partner agrees to inform such employees, contractors, subcontractors, or other entities of the obligations under this clause and to bind them to such obligations.

2. Based on the purpose and scope of this Agreement, and the responsibilities of the Parties, NASA has made an administrative determination that the provisions of section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. § 2457(a)), do not apply to this Agreement. Therefore, title to inventions made (conceived or first actually reduced to practice) as a result of activities performed under this Agreement will remain with the respective inventing party(ies). No invention or patent rights are exchanged between or granted by such parties under this Agreement except that NASA and Partner agree to use reasonable efforts to identify and report to each other any invention that is believed to have been made jointly by employees of Partner and employees of NASA (including employees of such NASA contractors, subcontractors, or other entities), and to consult and agree as to the responsibilities and course of

action to be taken to establish and maintain patent protection on such invention and on the terms and conditions of any license or other rights to be exchanged or granted by or between NASA and Partner.

ARTICLE 11. USE OF NASA NAME AND NASA EMBLEMS AND RELEASE OF GENERAL INFORMATION TO THE PUBLIC

1. NASA Name and Initials

Partner agrees the words "National Aeronautics and Space Administration" and the letters "NASA" will not be used in connection with a product or service in a manner reasonably calculated to convey any impression that such product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. In addition, with the exception of release of general information in accordance with paragraph 3 below, Partner agrees that any proposed public use of the NASA name or initials (including press releases resulting from activities conducted under this Agreement and all promotional and advertising use) shall be submitted by Partner in advance to the NASA Assistant Administrator for Public Affairs or designee ("NASA Public Affairs") for review and approval. Approval by NASA Public Affairs shall be based on applicable law and policy governing the use of the NASA name and initials.

2. NASA Emblems

Use of NASA emblems/devices (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) are governed by 14 C.F.R. Part 1221. Partner agrees that any proposed use of such emblems/devices shall be submitted for review and approval by NASA Public Affairs in accordance with such regulations.

3. Release of General Information to the Public

NASA or Partner may, consistent with Federal law and this Agreement, release general information regarding its own participation in this Agreement as desired.

ARTICLE 12. DISCLAIMER OF WARRANTY

Equipment, facilities, technical information, and services provided by NASA under this Agreement are provided "as is." NASA makes no express or implied warranty as to the condition of such equipment, facilities, technical information, or services, or as to the condition of any research or information generated under this Agreement, or as to any products made or developed under or as a result of this Agreement including as a result of the use of information generated hereunder, or as to the merchantability or fitness for a particular purpose of such research, information, or resulting product, or that the equipment, facilities, technical information, or services provided will accomplish the intended results or are safe for any purpose including the intended purpose, or that any of the above will not interfere with privately owned rights of others. Neither the government nor its contractors shall be liable for special, consequential or incidental damages attributed to such equipment, facilities, technical information, or services provided under this Agreement or such research, information, or resulting products made or developed under or as a result of this Agreement. Notwithstanding the foregoing, NASA will provide reasonable on-going assistance to Yahoo with regard to technical, administrative and service-oriented issues relating to the utilization, encoding, transmission and maintenance of the NASA TV content, as Yahoo may reasonably request.

ARTICLE 13. DISCLAIMER OF ENDORSEMENT

NASA does not endorse or sponsor any commercial product, service, or activity. NASA's participation in this Agreement or supply of equipment, facilities, technical information, or services under this Agreement does not constitute endorsement by NASA. Partner agrees that nothing in this Agreement will be construed to imply that NASA authorizes, supports, endorses, or sponsors any product or service of Partner resulting from activities conducted under this Agreement, regardless of the fact that such product or service may employ NASA-developed technology.

ARTICLE 14. COMPLIANCE WITH LAWS AND REGULATIONS

The Parties shall comply with all applicable laws and regulations including, but not limited to, safety, security, export control, and environmental laws and regulations. Access by Partner to a NASA facilities or property, or to a NASA Information Technology (IT) system or application, is contingent upon compliance with NASA security and safety policies and guidelines including, but not limited to, standards on badging, credentials, and facility and IT system/application access.

ARTICLE 15. TERM OF AGREEMENT

This Agreement becomes effective upon the date of the last signature below and shall remain in effect until the end of the Space Shuttle Program, or three (3) years from the date of the last signature, whichever comes first.

ARTICLE 16. RIGHT TO TERMINATE

Either Party may unilaterally terminate this Agreement by providing 30 calendar days written notice to the other Party.

ARTICLE 17. CONTINUING OBLIGATIONS

The obligations of the Parties set forth in the provisions, "Liability and Risk of Loss," "Intellectual Property Rights," shall continue to apply after the expiration or termination of this Agreement.

ARTICLE 18. MANAGEMENT POINTS OF CONTACTS

The following personnel are designated as the principal points of contact between the Parties in the performance of this Agreement.

Technical Points of Contact

NASA
Brian Dunbar
Manager Internet Services
Mail Suite: 5N17
300 E Street SW

Yahoo! Inc.
Charles Cooper
NASA TV Streaming Manager
2914 Taylor Street
Dallas, TX 75226

Washington, DC 20546
Phone: 202-358-0873
Fax: 202-358-4210
brian.dunbar@nasa.gov

Phone: 214-570-3892
Fax: TBD
ccooper@yahoo-inc.com

Business/Administrative Points of Contact

NASA
Jason Crusan
Agreement Manager
Mail Suite: 7N39
300 E Street SW
Washington, DC 20546
Phone: 202-358-0635
Fax: 202-358-3530
jason.c.crusan@nasa.gov

Yahoo! Inc.
Chris Hunter
Senior Director, Business Development
2401 Broadway
Dallas, TX 75226
ch@yahoo-inc.com

ARTICLE 19. DISPUTE RESOLUTION

Except as otherwise provided in the article of this Agreement entitled "Priority of Use," for those activities governed by 37 C.F.R. Part 404 under the article of this Agreement entitled "Intellectual Property Rights-Invention and Patent Rights," and those situations where a pre-existing statutory or regulatory system exists (e.g. under the Freedom of Information Act, 5 U.S.C. § 552), all disputes concerning questions of fact or law arising under this Agreement shall be referred by the claimant in writing to the appropriate person identified as the "Management Points of Contact (POCs)." The persons identified as the "Management Points of Contact (POCs)" for NASA and the Partner will consult and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the supervisors of the POCs, or their designated representatives, for joint resolution. If the Parties remain unable to resolve the dispute, then the NASA Associate Administrator for Space Operations or that person's designee will issue a written decision which shall be a final Agency decision for all purposes including judicial review. Nothing in this section limits or prevents either Party from pursuing any other right or remedy available by law after exhaustion of administrative remedies.

ARTICLE 20. MODIFICATIONS

Any modification to this Agreement shall be executed, in writing, and signed by an authorized representative of NASA and the Partner. Any modification that creates an additional commitment of NASA resources must be signed by the original NASA signatory authority, or successor, or a higher level NASA official possessing original or delegated authority to make such a commitment.

ARTICLE 21. ASSIGNMENT

Neither this Agreement nor any interest arising under it will be assigned by the Partner or NASA without the express written consent of the officials executing this Agreement.

ARTICLE 22. APPLICABLE LAW

U.S. Federal law governs this Agreement for all purposes, including, but not limited to, determining the validity of the Agreement, the meaning of its provisions, and the rights, obligations and remedies of the Parties.

ARTICLE 23. INDEPENDENT RELATIONSHIP

This Agreement is not intended to constitute, create, give effect or otherwise recognize a joint venture, partnership, or formal business organization, or agency agreement of any kind, and the rights and obligations of the Parties shall be only those expressly set forth herein.

ARTICLE 24. SIGNATORY AUTHORITY

The signatories to this Agreement covenant and warrant that they have authority to execute this Agreement. By signing below, the undersigned agrees to the above terms and conditions.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

BY: 

William H. Gerstenmaier
Associate Administrator for Space
Operations
Mail Suite: 7K39
300 E Street SW
Washington, DC 20546

DATE: Spt. 30, 2008

YAHOO! INC.

BY: 

Justin Madison
General Manager, Streaming Center
2914 Taylor Street
Dallas, TX 75226
Phone: 214-782-4151
jmadison@yahoo-inc.com

DATE: Oct 14, 2008